



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:
MORREALE HOTELS LLC,

Debtor.

Misc. Nos. 2:13-mp-00140-RK
and 2:13-mp-00141-RK

**MEMORANDUM DECISION ON
MOTIONS OF OAKTREE CAPITAL
MANAGEMENT, L.P. AND OAKTREE
GROUP HOLDINGS GP, LLC FOR
ATTORNEYS' FEES AND EXPENSES**

Pending before the court in these two miscellaneous cases are the duplicate joint motions of Oaktree Capital Management, L.P. ("Oaktree, L.P.") and Oaktree Capital Group Holdings, LLC ("Oaktree, LLC") for Attorneys' Fees and Expenses, filed on December 16, 2013, for an award of \$28,155.00 in attorneys' fees and \$1,750.00 in costs. *Oaktree Capital Group Holdings GP, LLC and Oaktree Capital Management, L.P.'s Motion for Attorneys' Fees and Expenses*, Case No. 2:13-mp-00141-RK, Docket No. 14 ("2:13-mp-00141 Motion") at 1:2–6; *Oaktree Capital Group Holdings GP, LLC and Oaktree Capital Management, L.P.'s Motion for Attorneys' Fees and Expenses*, Case No. 2:13-mp-00140-RK, Docket No. 19 ("2:13-mp-00140 Motion") at 2:2-6. The movants, Oaktree, L.P., and Oaktree, LLC, for purposes of this motion will be referred to as the "Oaktree Entities." Debtor Morreale Hotels, LLC, filed these two separate

1 miscellaneous actions to enforce document subpoenas issued to each of the movants
2 and the movants have now filed joint and duplicate motions for an award of attorneys'
3 fees and costs incurred in defending against these subpoenas in each of these
4 miscellaneous actions.

5 Having reviewed the moving, opposing, and reply papers, the court takes the
6 motions under submission on the papers, and grants in part and denies in part the
7 motions for the following reasons.

8 **Background**

9 Morreale Hotels, LLC, ("Debtor"), a Colorado limited liability company, filed a
10 voluntary Chapter 11 bankruptcy petition on December 14, 2012, in the United States
11 Bankruptcy Court for the District of Colorado ("Colorado Bankruptcy Court") Case No.
12 12-35230-ABC. *Motion by Debtor Morreale Hotels, LLC, to Enforce Subpoena and*
13 *Compel the Production of Documents Pursuant to Subpoena*, Case No. 2:13-mp-
14 00141-RK, Docket No. 1 at 5:2–4; *Motion by Debtor Morreale Hotels, LLC, to Enforce*
15 *Subpoena and Compel the Production of Documents Pursuant to Subpoena*, Case No.
16 2:13-mp-00140-RK, Docket No. 1 at 5:2-4. Debtor is the owner of two pieces of real
17 property in Denver, Colorado, the first located at 101-115 Broadway, also known as 21
18 West 1st Avenue ("Broadway Property") and the second located at 3015 E. Colfax Ave.
19 ("Colfax Property") (collectively, the "Properties"). *Id.* at 5:8–11. 2011-SIP-1
20 CRE/CADC Venture, LLC, ("SIP") is the owner and holder of two promissory notes from
21 Debtor that were assigned to SIP on August 4, 2011. *2:13-mp-00141-RK Motion* at
22 1:16–17; *2:13-mp-00140 Motion* at 2:16-17. Oaktree LLC is an investor in Acorn Loan
23 Portfolio Private Owner IV, LLC ("Acorn") which is in turn an investor in SIP, with Sabal
24 Financial Group, L.P., ("Sabal") acting as manager of SIP. *Declaration of Leigh A.*
25 *Flanagan Esq. in Support of the Debtor's Opposition to Oaktree Capital Group Holdings*
26 *GP, LLC and Oaktree Capital Management, L.P.'s Motion for Attorneys' Fees and*
27 *Expenses*, Case No. 2:13-mp-00141-RK, Docket No. 17 at ¶ 4(a); *Declaration of Leigh*
28 *A. Flanagan Esq. in Support of the Debtor's Opposition to Oaktree Capital Group*

1 *Holdings GP, LLC and Oaktree Capital Management, L.P.’s Motion for Attorneys’ Fees*
2 *and Expenses*, Case No. 2:13-mp-00141-RK, Docket No. 23 at ¶ 4(a). These
3 background facts are not disputed.

4 On May 3, 2013, the United States Trustee (“UST”) filed a Motion to Dismiss
5 Debtor’s Chapter 11 bankruptcy case pursuant to 11 U.S.C. § 1112(b)(4), in the
6 Colorado Bankruptcy Court. *2:13-mp-00141-RK Motion* at 1:27–28; *2:13-mp-00140-RK*
7 *Motion* at 2:27-28. On May 16, 2013, SIP filed its Motion for Relief from Stay pursuant
8 to 11 U.S.C. § 362(d)(2). *2:13-mp-00141-RK Motion* at 1:28–2:1; *2:13-mp-00140-RK*
9 *Motion* at 2:28-3:1. On June 12, 2013, Debtor filed its First Amended Plan of
10 Reorganization (the “Plan”). *2:13-mp-00141-RK Motion* at 2:1–2; *2:13-mp-00140-RK*
11 *Motion* at 3:1-2. Litigation then commenced on three contested matters: the UST
12 Motion to Dismiss, SIP’s Motion for Relief from Stay, and Debtor’s Plan. *2:13-mp-*
13 *00141-RK Motion* at 2:3-4; *2:13-mp-00140-RK Motion* at 3:3-4. On August 20, 2013,
14 Debtor issued its First Set of Written Discovery to SIP which included a request for SIP
15 to produce documents related to the Oaktree Entities and individuals in these entities.
16 *Debtor’s Opposition to Oaktree Capital Group Holdings GP, LLC and Oaktree Capital*
17 *Management, L.P.’s Motion for Attorneys’ Fees and Expenses*, Case No. 2:13-mp-
18 00141, Docket No. 16 at 2:23–24; *Debtor’s Opposition to Oaktree Capital Group*
19 *Holdings GP, LLC and Oaktree Capital Management, L.P.’s Motion for Attorneys’ Fees*
20 *and Expenses*, Case No. 2:13-mp-00140-RK, Docket No. 22 at 2:23-24. SIP lodged
21 relevancy and other objections against Debtor’s discovery request. *2:13-mp-00141-RK*
22 *Motion* at 2:11–12; *2:13-mp-00140-RK Motion* at 3:11-12. Debtor filed a Motion to
23 Enforce Subpoena in the Colorado Bankruptcy Court, which heard the discovery
24 dispute on September 16, 2013, and September 17, 2013. *Debtor’s Opposition to*
25 *Oaktree Capital Group Holdings GP, LLC and Oaktree Capital Management, L.P.’s*
26 *Motion for Attorneys’ Fees and Expenses*, Case No. 2:13-mp-00141, Docket No. 16 at
27 3:6–8; *Debtor’s Opposition to Oaktree Capital Group Holdings GP, LLC and Oaktree*
28 *Capital Management, L.P.’s Motion for Attorneys’ Fees and Expenses*, Case No. 2:13-

1 mp-00140-RK, Docket No. 22 at 3:6-8. The Colorado Bankruptcy Court ruled that
2 Debtor could not propound discovery on the Oaktree Entities through SIP; however,
3 that court indicated that Debtor could serve a third-party subpoena on the Oaktree
4 Entities if Debtor sought discovery from that entity. *2:13-mp-00141-RK Motion* at 2:18–
5 21; *2:13-mp-00140-RK Motion* at 3:18-21.

6 Thereafter, on October 2, 2013, Debtor served subpoenas duces tecum on the
7 Oaktree Entities to which the Oaktree Entities filed objections. *2:13-mp-00141-RK*
8 *Motion* at 2:23–3:3; *2:13-mp-00140-RK Motion* at 3:23-4:3. On October 29, 2013, the
9 Oaktree Entities filed two Motions to Quash Debtor’s Subpoena in the United States
10 District Court for the Central District of California (the “District Court”). *2:13-mp-00141-*
11 *RK Motion* at 3:6-8; *2:13-mp-00140-RK Motion* at 4:6-8. On November 1, 2013, Debtor
12 filed two Motions to Compel Production of Documents Pursuant to the Subpoena
13 against each Oaktree Entity, thereby commencing two miscellaneous proceedings in
14 this court. *2:13-mp-00141-RK Motion* at 3:9-10; *2:13-mp-00140-RK Motion* at 4:9-10.
15 On November 6, 2013, the court issued orders to show cause why each Oaktree Entity
16 should not be held in contempt for failure to comply with its respective subpoena.
17 *Order to Show Cause Why Non-Party Deponent Should Not be Held in Contempt*, Case
18 No. 2:13-mp-00141, Docket No. 2 at 2:1–4; *Order to Show Cause Why Non-Party*
19 *Deponent Should Not be Held in Contempt*, Case No. 2:13-mp-00141, Docket No. 2 at
20 2:1–4. Debtor and the Oaktree Entities subsequently stipulated to have this court rule
21 on both the Motions to Quash Subpoena filed in the District Court and the Motions to
22 Enforce Subpoena filed in this court. *2:13-mp-00141-RK Motion* at 3:10-12; *2:13-mp-*
23 *00140-RK Motion* at 4:10–12.

24 The Motions to Quash Subpoena and Motions to Enforce Subpoena came on for
25 hearing before the undersigned United States Bankruptcy Judge on November 14,
26 2013, November 18, 2013, November 20, 2013 and November 21, 2013. The court
27 ruled and entered an order on December 4, 2013, granting Oaktree LLC’s Motion to
28 Quash Subpoena in its entirety. *Order on Oaktree Capital Group Holdings GP, LLC’s*

1 *Motion to Quash the Debtor's Third Party Subpoena*, Case No. 2:13-mp-00141-RK
2 Docket No. 11 at 2:16-20; *Order on Oaktree Capital Group Holdings GP, LLC's Motion*
3 *to Quash the Debtor's Third Party Subpoena*, Case No. 2:13-mp-00140-RK Docket No.
4 12 at 2:16-20; *Order on Order to Show Cause on Debtor Morreale Hotels, LLC's Motion*
5 *to Enforce Subpoena and Compel the Production of Documents Pursuant to Subpoena*,
6 Case No. 2:13-mp-00141-RK, Docket No. 10 at 2:17-21; *Order on Order to Show*
7 *Cause on Debtor Morreale Hotels, LLC's Motion to Enforce Subpoena and Compel the*
8 *Production of Documents Pursuant to Subpoena*, Case No. 2:13-mp-00141-RK, Docket
9 No. 13 at 2:17-21. A separate order was entered on the same day denying Debtor's
10 Motion to Enforce Subpoena in its entirety. *Order on Order to Show Cause On*
11 *Debtor's Motion to Enforce Subpoena and Compel the Production of Documents*
12 *Pursuant to Subpoena*, Docket No. 10 at 2:13. The Orders provided that Oaktree LLC
13 may file a motion for attorneys' fees and expenses, and once filed and served, Debtor
14 would have seven days to file a response; following which, Oaktree LLC could reply to
15 the response. *Order on Oaktree Capital Group Holdings GP, LLC's Motion to Quash*
16 *the Debtor's Third Party Subpoena*, Case No. 2:13-mp-00141-RK Docket No. 11 at
17 2:16-20; *Order on Oaktree Capital Group Holdings GP, LLC's Motion to Quash the*
18 *Debtor's Third Party Subpoena*, Case No. 2:13-mp-00140-RK Docket No. 12 at 2:16-
19 20; *Order on Order to Show Cause on Debtor Morreale Hotels, LLC's Motion to Enforce*
20 *Subpoena and Compel the Production of Documents Pursuant to Subpoena*, Case No.
21 2:13-mp-00141-RK, Docket No. 10 at 2:17-21; *Order on Order to Show Cause on*
22 *Debtor Morreale Hotels, LLC's Motion to Enforce Subpoena and Compel the Production*
23 *of Documents Pursuant to Subpoena*, Case No. 2:13-mp-00141-RK, Docket No. 13 at
24 2:17-21.

25 On December 16, 2013, the Oaktree Entities timely filed the Motions for
26 Attorneys' Fees (one motion by Oaktree, L.P., and one motion by Oaktree, LLC),
27 contending that: (1) the Oaktree Entities are entitled to recover attorneys' fees and
28

1 costs under Federal Rule of Civil Procedure (“FRCP” or “Fed. R. Civ. P.”) 45(d)(1)¹
2 because the Debtor did not take reasonable steps to avoid imposing undue burden or
3 expense on the Oaktree Entities; (2) alternatively, the Oaktree Entities can also recover
4 their reasonable attorneys’ fees and costs under FRCP 37(a)(2) and FRCP 37(a)(5)
5 because its Motions to Quash were granted, Debtor’s Motions to Compel were denied,
6 and Debtor’s Motions were not substantially justified; and (3) the Oaktree Entities are
7 entitled to recover their attorneys’ fees and costs under applicable Local Bankruptcy
8 Rule 7054-1. *2:13-mp-00141-RK Motion* at 4:1-9:16; *2:13-mp-00140-RK Motion* at 5:1–
9 10:16. The Oaktree Entities further contended that their request for attorneys’ fees is
10 reasonable under the Lodestar Method, that the Oaktree Entities expended \$28,155.00
11 in attorneys’ fees and \$1,750.00 in costs to defend against Debtor’s Subpoena and, as
12 the prevailing parties, the Oaktree Entities are entitled to reimbursement for such
13 attorneys’ fees and costs. *2:13-mp-00141-RK Motion* at 8:17-9:26; *2:13-mp-00140-RK*
14 *Motion* at 9:17–10:26. Based on the declarations of Sharon Z. Weiss, counsel for the
15 Oaktree Entities, filed in these cases, the \$28,155.00 represented the fees for 66.80
16 hours of service by outside counsel for the Oaktree Entities, and the amount of
17 \$1,750.00 represented the reasonable value of the time spent on these matters by Cary
18 Kleinman, in-house counsel for the Oaktree Entities, (3.5 hours at \$500 per hour).
19 *2:13-mp-00141-RK Motion* at 13:3-14:22; *2:13-mp-00140-RK Motion* at 14:3-15:22.

20 On December 23, 2013, Debtor filed timely responses opposing the motions
21 asserting that: (1) Debtor took reasonable steps to avoid imposing any undue burden or
22 expense on the Oaktree Entities; (2) Debtor was substantially justified in pursuing the
23 discovery; and (3) the Oaktree Entities’ fees are unreasonable. *Debtor’s Opposition to*
24 *Oaktree Capital Group Holdings GP, LLC and Oaktree Capital Management, L.P.’s*
25 *Motion for Attorneys’ Fees and Expenses*, Case No. 2:13-mp-00141, Docket No. 16 at
26

27 ¹ This rule was amended in 2013 (formerly FRCP 45(c)(1) at the time the Motion for Attorneys’ Fees was
28 filed).

1 10:10-13:2; *Debtor's Opposition to Oaktree Capital Group Holdings GP, LLC and*
2 *Oaktree Capital Management, L.P.'s Motion for Attorneys' Fees and Expenses*, Case
3 No. 2:13-mp-00140-RK, Docket No. 22 at 11:10-14:2. Debtor argues it did attempt to
4 avoid imposing any undue burden and resolve the discovery disputes by: (a) offering to
5 narrow the two subpoenas to one subpoena if the Oaktree Entities would advise Debtor
6 as to its corporate structure and identify which Oaktree entity had involvement with
7 Debtor's loans; (b) voluntarily withdrawing document requests nos. 2, 3, 4, 16, 17, 24,
8 and 26 prior to any motion being filed before this court; (c) limiting the discovery
9 requests to those that SIP either agreed to answer or was ordered to answer by the
10 Colorado Bankruptcy Court; (d) attempting to bring the matters before just one
11 California court, instead of two; and (e) agreeing to narrow the definition of "Oaktree" in
12 the Subpoena and eventually limiting the discovery request to include only a list of
13 approximately eleven individuals. *Debtor's Opposition to Oaktree Capital Group*
14 *Holdings GP, LLC and Oaktree Capital Management, L.P.'s Motion for Attorneys' Fees*
15 *and Expenses*, Case No. 2:13-mp-00141, Docket No. 16 at 8:7-9:13 and 11:1-4;
16 *Debtor's Opposition to Oaktree Capital Group Holdings GP, LLC and Oaktree Capital*
17 *Management, L.P.'s Motion for Attorneys' Fees and Expenses*, Case No. 2:13-mp-
18 00140-RK, Docket No. 22 at 9:7-10:13 and 12:1-4. Debtor also argues that it attempted
19 to gain a better understanding of the Oaktree Entities' role in this matter and its
20 corporate structure, but its efforts were opposed by the Oaktree Entities. *Debtor's*
21 *Opposition to Oaktree Capital Group Holdings GP, LLC and Oaktree Capital*
22 *Management, L.P.'s Motion for Attorneys' Fees and Expenses*, Case No. 2:13-mp-
23 00141, Docket No. 16 at 10:27-11:1; *Debtor's Opposition to Oaktree Capital Group*
24 *Holdings GP, LLC and Oaktree Capital Management, L.P.'s Motion for Attorneys' Fees*
25 *and Expenses*, Case No. 2:13-mp-00140-RK, Docket No. 22 at 11:27-12:1. Debtor
26 argues it was substantially justified in pursuing discovery because Debtor was following
27 the guidance of Judge Campbell of the Colorado Bankruptcy Court in issuing a
28 subpoena directly on the Oaktree Entities, and Debtor was relying upon the statements

1 of the Federal Deposit Insurance Corporation ("FDIC") to contact the Oaktree Entities.
2 *Debtor's Opposition to Oaktree Capital Group Holdings GP, LLC and Oaktree Capital*
3 *Management, L.P.'s Motion for Attorneys' Fees and Expenses*, Case No. 2:13-mp-
4 00141, Docket No. 16 at 11:19-26; *Debtor's Opposition to Oaktree Capital Group*
5 *Holdings GP, LLC and Oaktree Capital Management, L.P.'s Motion for Attorneys' Fees*
6 *and Expenses*, Case No. 2:13-mp-00140-RK, Docket No. 22 at 12:19-26.

7 On December 30, 2013, the Oaktree Entities filed timely replies contending that:
8 (1) Debtor was not substantially justified in issuing its subpoena because Debtor
9 wrongfully focuses on the representations of others to show that it was substantially
10 justified in pursuing the Oaktree discovery and reasonable people could not differ as to
11 whether Oaktree had any relevant information; (2) Debtor fails to show that it took
12 reasonable steps to avoid imposing undue burden or expense on the Oaktree Entities
13 pursuant to FRCP 45(d)(1) because the concessions that the Debtor made do not
14 detract from the fact that Debtor was requesting the Oaktree Entities to provide
15 information from individuals far removed from the deal; (3) Debtor's Opposition is an
16 improper motion for reconsideration; and (4) the Oaktree Entities' attorneys' fees and
17 expenses are reasonable. *Reply of Oaktree Entities to Debtor Morreale Hotel, LLC's*
18 *Opposition to Motion for Attorney's Fees and Expenses*, Case No. 2:13-mp-00141-RK,
19 Docket No. 19, at 2:23-9:7; *Reply of Oaktree Entities to Debtor Morreale Hotel, LLC's*
20 *Opposition to Motion for Attorney's Fees and Expenses*, Case No. 2:13-mp-00140-RK
21 Docket No. 25, at 2:23-9:7.

22 On March 10, 2014, the court entered an Order for Surreply on the Oaktree
23 Entities' Motion for Attorneys' Fees and Expenses. *Order for Surreply on Oaktree*
24 *Capital Management, L.P. and Oaktree Capital Group Holdings GP, LLC'S Motions for*
25 *Attorneys' Fees and Expenses*, Case No. 2:13-mp-00141-RK, Docket No. 20 at 1:24-
26 27; *Order for Surreply on Oaktree Capital Management, L.P. and Oaktree Capital*
27 *Group Holdings GP, LLC'S Motions for Attorneys' Fees and Expenses*, Case No. 2:13-
28 mp-00140-RK, Docket No. 20 at 1:24-27. In this order, the court ordered that Debtor's

1 surreply shall address why attorneys' fees and expenses should not be awarded in
2 favor of the Oaktree Entities on grounds that the Motions to Quash Subpoena were
3 entirely granted and that it appeared to the court that Debtor failed to articulate a
4 reason that the discovery it requested from the Oaktree Entities was relevant in any
5 way. *Order for Surreply on Oaktree Capital Management, L.P. and Oaktree Capital*
6 *Group Holdings GP, LLC'S Motions for Attorneys' Fees and Expenses*, Case No. 2:13-
7 mp-00141-RK, Docket No. 20 at 2:3-10; *Order for Surreply on Oaktree Capital*
8 *Management, L.P. and Oaktree Capital Group Holdings GP, LLC'S Motions for*
9 *Attorneys' Fees and Expenses*, Case No. 2:13-mp-00140-RK, Docket No. 20 at 2:3-10.

10 On March 24, 2014, Debtor filed Surreplies essentially reiterating its arguments
11 for why the requested discovery material was relevant, namely that: (1) Debtor was
12 relying on communications from the FDIC and the Oaktree Entities themselves in
13 believing that the Oaktree Entities were involved in Debtor's loans and may have had
14 information that was relevant to the then-pending Motion for Relief from Stay, Chapter
15 11 Plan confirmation hearings, and Motion to Dismiss; and (2) Debtor's discovery
16 requests to Oaktree were primarily aimed at obtaining information or documents
17 reasonably calculated to lead to discovering admissible evidence on valuation,
18 evidence to defend against SIP's allegations of bad faith, and other allegations asserted
19 against Debtor. *Debtor's Surreply on Oaktree Capital Management, L.P. and Oaktree*
20 *Capital Group Holdings GP, LLC's Motions for Attorneys' Fees and Expenses*, Case
21 No. 2:13-mp-00141-RK, Docket No. 24 at 1:15-22; 2:21-27; *Debtor's Surreply on*
22 *Oaktree Capital Management, L.P. and Oaktree Capital Group Holdings GP, LLC'S*
23 *Motions for Attorneys' Fees and Expenses*, Case No. 2:13-mp-00140-RK, Docket No.
24 30 at 1:15-22; 2:21-27.

25 On March 28, 2014, the court ordered the Oaktree Entities to submit a detailed
26 account of their attorneys' fee statements with specific and detailed billing entries in
27 support of the Motion for Attorneys' Fees to determine the reasonableness of the fee
28 requests. *Order Requiring the Oaktree Entities to File and Serve Attorneys' Fee*

1 *Statements in Support of Motions for Attorneys' Fees and Expenses*, Case No. 2:13-
2 mp-00141-RK, Docket No. 25 at 1:22–27; *Order Requiring the Oaktree Entities to File*
3 *and Serve Attorneys' Fee Statements in Support of Motions for Attorneys' Fees and*
4 *Expenses*, Case No. 2:13-mp-00140-RK, Docket No. 31 at 1:22–27. The court further
5 ordered that Debtor file any objections to the reasonableness of the claimed fees on the
6 billing statements submitted by the Oaktree Entities. *Order Requiring the Oaktree*
7 *Entities to File and Serve Attorneys' Fee Statements in Support of Motions for*
8 *Attorneys' Fees and Expenses*, Case No. 2:13-mp-00141-RK, Docket No. 25 at 2:4-6;
9 *Order Requiring the Oaktree Entities to File and Serve Attorneys' Fee Statements in*
10 *Support of Motions for Attorneys' Fees and Expenses*, Case No. 2:13-mp-00140-RK,
11 Docket No. 31 at 2:4-6.

12 On April 14, 2014, pursuant to the court's order, the Oaktree Entities filed
13 Statements in Support of the Motion for Attorneys' Fees and Expense by attaching a
14 declaration of lead counsel for the Oaktree Entities, Sharon Z. Weiss, and including a
15 spreadsheet containing a detailed account of all billing entries associated with these
16 matters. *Oaktree Capital Group Holdings GP, LLC'S Statement in Support of Motion for*
17 *Attorneys' Fees and Expenses*, Case No. 2:13-mp-00141-RK, Docket No. 31 at 1:1–7;
18 *Oaktree Capital Group Holdings GP, LLC'S Statement in Support of Motion for*
19 *Attorneys' Fees and Expenses*, Case No. 2:13-mp-00140-RK, Docket No. 37 at 1:1–7.
20 The total amount of attorneys' fees and costs as asserted in Oaktree Entities'
21 supporting statements is \$49,495.00. *Oaktree Capital Group Holdings GP, LLC'S*
22 *Statement in Support of Motion for Attorneys' Fees and Expenses*, Case No. 2:13-mp-
23 00141-RK, Docket No. 31, Exhibit A at 2:13; *Oaktree Capital Group Holdings GP,*
24 *LLC'S Statement in Support of Motion for Attorneys' Fees and Expenses*, Case No.
25 2:13-mp-00140-RK, Docket No. 37, Exhibit A at 2:13.

26 On May 9, 2014, Debtor filed replies to the Oaktree Entities' supporting
27 statements to provide reasoning for why Debtor believes the request for attorneys' fees
28 and costs is unreasonable. *Debtor's Reply to Oaktree Capital Management, L.P. and*

Oaktree Capital Group Holdings GP, LLC'S Statements in Support of Motions for Attorneys' Fees and Expenses, Case No. 2:13-mp-00141-RK, Docket No. 32 at 1:3–14; *Debtor's Reply to Oaktree Capital Management, L.P. and Oaktree Capital Group Holdings GP, LLC'S Statements in Support of Motions for Attorneys' Fees and Expenses*, Case No. 2:13-mp-00140-RK, Docket No. 38 at 1:3-14. Debtor argues that: (1) Oaktree's own actions contributed to the Oaktree Entities' expenses in this matter and such costs should not be borne by the Debtor; (2) the amount of fees for certain tasks is unreasonable, overstated, and/or unsupported; (3) certain fees related to the bankruptcy case in Colorado and not to the Oaktree matter in California; and (4) the Oaktree Entities' fees are excessive. *Debtor's Reply to Oaktree Capital Management, L.P. and Oaktree Capital Group Holdings GP, LLC'S Statements in Support of Motions for Attorneys' Fees and Expenses*, Case No. 2:13-mp-00141-RK, Docket No. 32 at 1:15-6:16; *Debtor's Reply to Oaktree Capital Management, L.P. and Oaktree Capital Group Holdings GP, LLC'S Statements in Support of Motions for Attorneys' Fees and Expenses*, Case No. 2:13-mp-00140-RK, Docket No. 38 at 1:15-6:16.

Discussion

1. The Oaktree Entities Are Entitled to Recover Attorneys' Fees and Costs Under Fed. R. Civ. P. 45(d)(1) Because Debtor's Requests Presented Undue Burden.

Rule 45(d)(1) of the Federal Rules of Civil Procedure provides:

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions* A party or attorney responsible for issuing and serving a subpoena *must* take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction--which *may* include lost earnings and reasonable attorney's fees--on a party or attorney who fails to comply (emphasis added).

When enforcing Rule 45(d)(1), "courts have discretion over the type and degree of sanction imposed." *Mount Hope Church v. Bash Back!*, 705 F.3d 418, 425 (9th Cir.

2012). As argued by the Oaktree Entities, some courts, including the Ninth Circuit Bankruptcy Appellate Panel, have indicated a willingness to read Rule 45(d)(1) more broadly. *2:13-mp-00141-RK Motion* at 4:44-5:15; *2:13-mp-00140-RK Motion* at 5:22-6:15, *citing inter alia, In re Shubov*, 253 B.R. 540, 547 (9th Cir. BAP 2000) (“When a subpoena should not have been issued, literally everything done in response to it constitutes ‘undue burden and expense’ . . .”). However, the Ninth Circuit itself has not adopted this more expansive interpretation of Rule 45(d)(1). *Mount Hope Church v. Bash Back!*, 705 F.3d at 427. The Ninth Circuit has instead held that “absent undue burden imposed by an oppressive subpoena, a facially defective subpoena, or bad faith on the requesting party,” sanctions under FRCP 45(d)(1) are inappropriate. *Id.* Under the rule requiring a party issuing a subpoena to take reasonable steps to avoid imposing undue burden, under the Ninth Circuit’s view in *Mount Hope Church*, the “undue burden” language is limited to harm inflicted by complying with the subpoena. See *id.* at 427-428. Thus, under *Mount Hope Church*, greater emphasis is placed on the recipient’s burden than on the issuer’s motive. *Id.* at 428–29.

The Oaktree Entities argue Debtor did not take reasonable steps to avoid imposing undue burden or expense. *2:13-mp-00141-RK Motion* at 5:10-14; *2:13-mp-00140-RK Motion* at 6:10-14. The Oaktree Entities argue that: (1) the Oaktree Entities’ employees and attorneys had to attend four different hearings for requested information that would be cumbersome, expensive to obtain, and irrelevant to the current litigation; and (2) Debtor refused all reasonable attempts to resolve the dispute. *Id.* at 6:10-18; 6:19-20. The Oaktree Entities additionally argue and question whether Debtor’s concessions were made in good faith given that the Debtor has revealed its potential plan to institute new litigation against the Oaktree Entities. *Reply of Oaktree Entities to Debtor Morreale Hotel, LLC’s Opposition to Motion for Attorney’s Fees and Expenses*, Case No. 2:13-mp-00141-RK, Docket No. 19, at 7:13-16; *Reply of Oaktree Entities to Debtor Morreale Hotel, LLC’s Opposition to Motion for Attorney’s Fees and Expenses*, Case No. 2:13-mp-00140-RK Docket No. 25, at 7:13-16.

1 Debtor argues it did attempt to resolve and narrow the discovery disputes by: (1)
2 offering to reduce the two subpoenas into one subpoena if the Oaktree Entities would
3 advise the Debtor as to its corporate structure and identify which Oaktree entity had
4 involvement with Debtor's loans; (2) agreeing to withdraw document requests nos. 2, 3,
5 4, 16, 17, 24 and 26 prior to any motion being filed before this Court; (3) agreeing to
6 narrow the definition of "Oaktree" in the subpoena; and (4) attempting to bring the
7 matters before just one California court, instead of two. *Debtor's Opposition to Oaktree*
8 *Capital Group Holdings GP, LLC and Oaktree Capital Management, L.P.'s Motion for*
9 *Attorneys' Fees and Expenses*, Case No. 2:13-mp-00141, Docket No. 16 at 8:12-9:14;
10 *Debtor's Opposition to Oaktree Capital Group Holdings GP, LLC and Oaktree Capital*
11 *Management, L.P.'s Motion for Attorneys' Fees and Expenses*, Case No. 2:13-mp-
12 00140-RK, Docket No. 22 at 8:12-9:14. Debtor also contends that it attempted to gain
13 better understanding of the Oaktree Entities' role in this manner and their corporate
14 structure, but its efforts were opposed. *Debtor's Opposition to Oaktree Capital Group*
15 *Holdings GP, LLC and Oaktree Capital Management, L.P.'s Motion for Attorneys' Fees*
16 *and Expenses*, Case No. 2:13-mp-00141, Docket No. 16 at 10:27-11:1; *Debtor's*
17 *Opposition to Oaktree Capital Group Holdings GP, LLC and Oaktree Capital*
18 *Management, L.P.'s Motion for Attorneys' Fees and Expenses*, Case No. 2:13-mp-
19 00140-RK, Docket No. 22 at 10:27-11:1. The Oaktree Entities argue that Debtor's
20 asserted concessions are insubstantial because the discovery requests still required
21 the Oaktree Entities to provide information from individuals far removed from the deal.
22 *Reply of Oaktree Entities to Debtor Morreale Hotel, LLC's Opposition to Motion for*
23 *Attorney's Fees and Expenses*, Case No. 2:13-mp-00141-RK, Docket No. 19 at 7:4-6;
24 *Reply of Oaktree Entities to Debtor Morreale Hotel, LLC's Opposition to Motion for*
25 *Attorney's Fees and Expenses*, Case No. 2:13-mp-00140-RK Docket No. 25 at 7:4-6.
26 Nevertheless, Debtor maintains that the discovery requests to Oaktree were primarily
27 aimed at obtaining information reasonably calculated to lead to discovering admissible
28 evidence on valuation and evidence to defend against SIP's allegations of bad faith, as

1 well as the plethora of allegations asserted by SIP against the Debtor. *Debtor's*
2 *Surreply on Oaktree Capital Management, L.P. and Oaktree Capital Group Holdings*
3 *GP, LLC'S Motions for Attorneys' Fees and Expenses*, Case No. 2:13-mp-00140-RK,
4 Docket No. 30 at 2:20-24.

5 In this case, the court determines that Debtor did not take all of the reasonable
6 steps it could to prevent undue burden on the Oaktree Entities. Much of the information
7 requested of the Oaktree Entities was irrelevant to the contested matters of the UST's
8 dismissal motion, SIP's stay relief motion and confirmation of Debtor's Chapter 11 plan.
9 Debtor disagreed with the Oaktree Entities' characterization of the issues before the
10 Colorado Bankruptcy Court:

11 Oaktree's statements in its pending Motion as to what issues
12 are before the Bankruptcy Court are also inconsistent and
13 inaccurate. First, Oaktree states that Judge Campbell
14 "narrowed the issues for trial to plan feasibility and adequate
15 protection." Then Oaktree states that "the Colorado
16 bankruptcy court ruled (and the parties agree for purposes
of the underlying Motion to Compel and Motion to Quash)
that the only relevant issues are 1) valuation; and 2) lack of
good faith. Oaktree's statements are inconsistent and
inaccurate, and are not supported by any citation to a
pleading or Court Order or transcript.

17 *Debtor's Opposition to Oaktree Capital Group Holdings GP, LLC and Oaktree Capital*
18 *Management, L.P.'s Motion for Attorneys' Fees and Expenses*, Case No. 2:13-mp-
19 00141, Docket No. 16 at 9:14-21; *Debtor's Opposition to Oaktree Capital Group*
20 *Holdings GP, LLC and Oaktree Capital Management, L.P.'s Motion for Attorneys' Fees*
21 *and Expenses*, Case No. 2:13-mp-00140-RK, Docket No. 22 at 9:14-21. In response to
22 the Oaktree Entities' characterization of the issues before the Colorado Bankruptcy
23 Court, Debtor explained, "Debtor's Discovery to Oaktree was aimed at nonprivileged
24 information relevant to Debtor's proposed Chapter 11 Plan of Reorganization and the
25 Debtor's defenses to a pending motion to dismiss and a pending motion for relief from
26 stay, all of which involved multiple legal and factual issues including adequate
27 protection, valuation, interest rates, feasibility, all of the requirements in [11 U.S.C.]
28 § 1129, the Debtor's pre-petition and post-petition management of its assets, and the

1 Debtor's good faith in filing the Chapter 11 case." *Debtor's Opposition to Oaktree*
2 *Capital Group Holdings GP, LLC and Oaktree Capital Management, L.P.'s Motion for*
3 *Attorneys' Fees and Expenses*, Case No. 2:13-mp-00141, Docket No. 16 at 1:6-11 and
4 9:21-26; *Debtor's Opposition to Oaktree Capital Group Holdings GP, LLC and Oaktree*
5 *Capital Management, L.P.'s Motion for Attorneys' Fees and Expenses*, Case No. 2:13-
6 mp-00140-RK, Docket No. 22 at 1:6-11 and 9:21-26.

7 Even accepting Debtor's descriptions of the purposes of its discovery requests to
8 the Oaktree Entities and the issues before the Colorado Bankruptcy Court, the
9 discovery requests in the document subpoenas to the Oaktree Entities sought irrelevant
10 information. As acknowledged by Debtor, it had withdrawn document requests nos. 2,
11 3, 4, 16, 17, 24 and 26. *Debtor's Opposition to Oaktree Capital Group Holdings GP,*
12 *LLC and Oaktree Capital Management, L.P.'s Motion for Attorneys' Fees and*
13 *Expenses*, Case No. 2:13-mp-00141, Docket No. 16 at 8:21-22; *Debtor's Opposition to*
14 *Oaktree Capital Group Holdings GP, LLC and Oaktree Capital Management, L.P.'s*
15 *Motion for Attorneys' Fees and Expenses*, Case No. 2:13-mp-00140-RK, Docket No. 22
16 at 8:21-22. Debtor's withdrawal of these document requests was made in the joint
17 stipulation of the parties filed with the District Court, signed on October 28, 2013, before
18 the Oaktree Entities filed their motions to quash in that court on October 29, 2013, and
19 Debtor filed its motions to enforce the subpoenas on November 1, 2013. *Joint*
20 *Stipulation Regarding Motions to Quash Debtor's Third Party Subpoena*, filed with the
21 District Court on October 29, 2013 (copy attached as Exhibit D to *Third-Party*
22 *Respondent's Opposition to Order to Show Cause on Debtor Morreale Hotel, LLC's*
23 *Motion to Enforce Subpoena and Compel the Production of Documents Pursuant to*
24 *Subpoena*, Case No. 2:13-mp-00141-RK, Docket No. 6). Nevertheless, the remaining
25 document requests, nos. 1, 5-15, 18-23 and 25 that were not withdrawn and continued
26 to be asserted by Debtor still sought irrelevant information, that is, not relevant to the
27 issues before the Colorado Bankruptcy Court. The court notes that Rule 401 of the
28 Federal Rules of Evidence provides: "Evidence is relevant if: (a) it has any tendency to

1 make a fact more or less probable than it would be without the evidence; and (b) the
2 fact is of consequence in determining the action.” The court recognizes, of course, that
3 whether or not the information sought is admissible evidence at trial is not the standard
4 of relevance for discoverable information under Rule 26(b)(1), but cites Fed. R. Evid.
5 401 for the general proposition that the discovery sought should have some bearing on
6 the issues to be litigated.

7 The outstanding requests in Debtor’s subpoenas to the Oaktree Entities sought
8 all written or recorded documents, communications, and correspondence between First
9 Tier Bank and Oaktree from 2008 to present relating to Debtor’s Hotel Properties and
10 loans relating to those properties (i.e., the Colfax Loan and the Broadway Loan)
11 (request no. 1); the same between the City and County of Denver and Oaktree (request
12 no. 5); the same between SIP and Oaktree (request no. 6); all documents evidencing
13 what Oaktree received in payments, reimbursements, or compensation for managing
14 the loans (request no. 7); all documents evidencing what Oaktree paid to the FDIC for
15 the Colfax Loan (request no. 8); all documents evidencing what Oaktree paid to the
16 FDIC for the Broadway Loan (request no. 9); all documents evidencing what Oaktree
17 paid to the FDIC to acquire SIP (request no. 10); all documents evidencing how
18 Oaktree evaluated and valued the Debtor’s Hotel Properties from 2008 to present
19 (request no. 11); all documents evidencing any agreement between Oaktree and the
20 FDIC regarding the Colfax Loan (request no. 12); all documents evidencing any
21 agreement between Oaktree and the FDIC regarding the Broadway Loan (request no.
22 13); all documents evidencing any payment, advance, or reimbursement from the FDIC
23 to Oaktree under any agreement in connection with the Broadway loan (request no.
24 14); all documents evidencing any payment, advance, or reimbursement from the FDIC
25 to Oaktree under any agreement in connection with the Colfax loan (request no. 15); all
26 minutes of meetings of Oaktree, including the boards of directors and all committees,
27 relating to Debtor or its principal, Jesse Morreale (request no. 18); all internal
28 communications at Oaktree, including between any employees, boards of directors and

1 all committees, of Oaktree and its parent companies, relating to Debtor or its principal,
2 Jesse Morreale (request no. 19); full copies of all appraisals, broker's price opinions,
3 market analyses, valuation reports, and other valuations, including all updates and
4 supplements, for the Broadway Property, whether requested by First Tier Bank, the
5 FDIC, Oaktree, or SIP (request no. 20); full copies of all appraisals, broker's price
6 opinions, market analyses, valuation reports and other valuations, including all updates
7 and supplements, for the Colfax Property, whether requested by First Tier Bank, the
8 FDIC, Oaktree, or SIP (request no. 21); all documents, records, and notes from
9 meetings, discussions, and other communications with Debtor or its principal, Jesse
10 Morreale (request no. 22); all documents, and other communications regarding Debtor's
11 principal Jesse Morreale's emails to Howard Marks and responses from Mark Jacobs at
12 Oaktree to Jesse Morreale (request no. 23); and all documents, including
13 organizational, operating, and servicing agreements, that set forth Oaktree's policy or
14 restrictions regarding Oaktree's loans that are secured by real property with
15 environmental or hazardous materials issues (request no. 25).

16 Debtor argues that these outstanding document requests sought relevant
17 information, but saying so does not make it necessarily so. Under Rule 26(b)(1) of the
18 Federal Rules of Civil Procedure, each party generally has the right to discover "any
19 nonprivileged matter that is relevant to any party's claim or defense." See also, 2
20 Schwarzer, Tashima and Wagstaffe, *California Practice Guide: Federal Civil Procedure*
21 *Before Trial*, ¶ 11:610 at 11-82 (2014). In addition, under Rule 26(b)(1), "for good
22 cause," the court may permit discovery of information "relevant to the subject matter
23 involved in the action." *Id.* A party's right to take discovery is subject to certain
24 limitations on the frequency and extent of discovery regarding proportionality between
25 the costs and benefits of discovery, including Rules 26(b)(2)(C) and 45(d)(1) of the
26 Federal Rules of Civil Procedure. Rule 26(b)(2)(C) provides: "On motion or on its own,
27 the court must limit the frequency or extent of discovery otherwise allowed by these
28 rules or by local rule if it determines that: . . . (iii) the burden or expense of the proposed

1 discovery outweighs its likely benefit, considering the needs of the case, the amount in
2 controversy, the parties' resources, the importance of the issues at stake in the action,
3 and the importance of the discovery in resolving the issues." See also, 2 Schwarzer,
4 Tashima and Wagstaffe, *California Practice Guide: Federal Civil Procedure Before*
5 *Trial*, ¶ 11:543 at 11-73, *citing Coleman v. American Red Cross*, 23 F.3d 1091, 1098
6 (6th Cir. 1994) (defendant would have been required "to search every file that exists" at
7 its headquarters to locate requested documents). Rule 45(d)(1) provides that "[a] party
8 or attorney responsible for issuing and serving a subpoena must take reasonable steps
9 to avoid imposing undue burden or expense on a person subject to the subpoena."

10 Debtor and its counsel were given opportunities to explain how its outstanding
11 document requests were relevant to the issues before the Colorado Bankruptcy Court
12 on the three discrete litigation matters, i.e., the United States Trustee's motion to
13 dismiss, SIP's stay relief motion and Debtor's plan confirmation, and its explanations in
14 its oppositions are non-specific and unresponsive. *Debtor's Opposition to Oaktree*
15 *Capital Group Holdings GP, LLC and Oaktree Capital Management, L.P.'s Motion for*
16 *Attorneys' Fees and Expenses*, Case No. 2:13-mp-00141, Docket No. 16 at 6-12;
17 *Debtor's Opposition to Oaktree Capital Group Holdings GP, LLC and Oaktree Capital*
18 *Management, L.P.'s Motion for Attorneys' Fees and Expenses*, Case No. 2:13-mp-
19 00140-RK, Docket No. 22 at 6-12. The court raised the issue of relevance of the
20 requested discovery in the document subpoenas, which was discussed between the
21 court and counsel at the hearings on November 18 and 20, 2013. *Audio Recording of*
22 *Proceedings on November 20, 2014, 1:28 to 1:48 p.m. and on November 21, 2013,*
23 *1:59 to 3:24 p.m.* Case Nos. 2:13-mp-00140-RK and 2:13-mp-00141-RK, At the
24 hearing on November 21, 2013, the court asked counsel for Debtor to explain the
25 relevance of the outstanding document requests, and counsel for Debtor was not able
26 to articulate specific and responsive reasons why the discovery was relevant.
27 *Transcript of Proceedings on November 21, 2013*, Case No. 2:13-mp-00140-RK,
28 Docket No. 21 at 7-17. Accordingly, the court determined that Debtor's outstanding

1 document requests did not seek relevant information and ruled that the document
2 subpoenas should be quashed. *Id.*

3 For example, Debtor's requests for all documents showing what the Oaktree
4 Entities are paid for managing the loans (Document Request No. 7), what they paid for
5 the interests in the asset loans (Document Requests Nos. 8 and 9), what they paid to
6 acquire SIP (request no. 10), what agreements they had with the FDIC regarding the
7 asset loans (Document Request Nos. 12 and 13), and what payments they received
8 from the FDIC regarding the asset loans (Document Request Nos. 14 and 15) have
9 little or no relevance or bearing to the issues of feasibility of Debtor's Chapter 11 plan,
10 including valuation of the assets, adequate protection of the secured lender's interest in
11 the assets, and Debtor's good faith in filing the Chapter 11 case and the Chapter 11
12 plan. Moreover, Debtor's request for all documents, including organizational, operating
13 and servicing agreements, that set forth the Oaktree Entities' policy and restrictions
14 regarding their loans secured by real property with environmental or hazardous
15 materials issues (Document Request No. 25) has little or no relevance or bearing to
16 these issues. Furthermore, Debtor failed to show how all documents, communications,
17 and correspondence between the Oaktree Entities and First Tier Bank, the original
18 lender, the Oaktree Entities and the City and County of Denver, and the Oaktree
19 Entities and the SIP it requested (Document Request Nos. 1, 5 and 6) had any
20 relevance or bearing to the issues of feasibility of Debtor's Chapter 11 plan, adequate
21 protection of the lender's secured interests, or Debtor's good faith. Debtor also failed to
22 show how all minutes of meetings of the Oaktree Entities, including boards of directors
23 and all committees and internal communications of the Oaktree Entities, including all
24 employees, boards of directors and committees relating to Debtor and its principal,
25 Jesse Morreale, and all documents, records and notes from meetings, discussions and
26 other communications with Debtor and its principal, Mr. Morreale, it requested
27 (Document Request Nos. 18, 19 and 23) had any relevance or bearing to the issues of
28 feasibility of Debtor's Chapter 11 plan, adequate protection of the lender's secured

1 interests, or Debtor's good faith, which are really matters of the Debtor's efforts or
2 conduct rather than those of the Oaktree Entities. None of these described requests
3 sought information probative of the issues before the Colorado Bankruptcy Court and
4 imposed a disproportionate and undue burden on the Oaktree Entities to conduct
5 extensive and exhaustive searches of their business records. Fed. R. Civ. P.
6 26(b)(2)(C)(iii) and 45(d)(1); 2 Schwarzer, Tashima and Wagstaffe, *California Practice*
7 *Guide: Federal Civil Procedure Before Trial*, ¶ 11:543 at 11-73, *citing Coleman v.*
8 *American Red Cross*, 23 F.3d at 1098 (defendant would have been required "to search
9 every file that exists" at its headquarters to locate requested documents). As another
10 example, Debtor requested information that would be expensive and cumbersome to
11 obtain from individuals who are far removed from the litigation, including Oaktree L.P.'s
12 CEO Howard Marks (Document Request No. 23) without any showing of involvement of
13 such individuals in this matter.

14 Thus, based on the foregoing discussion, the subject subpoenas unreasonably
15 forced the Oaktree Entities as nonparty subpoena respondents to undertake extensive
16 searches of their computer and document files for such irrelevant information, which
17 would be both unnecessary and burdensome. Despite that the Debtor agreed to
18 withdraw certain document requests and narrow its definition of "Oaktree," the Oaktree
19 Entities would still be forced to canvas every entity in their large corporate structure to
20 satisfy the unreasonably wide breadth of the Debtor's document subpoenas. Based on
21 these circumstances, the court in quashing the subpoenas determined that Debtor's
22 requests for irrelevant information were not reasonably calculated to prevent undue
23 burden upon the Oaktree Entities.

24 Accordingly, the court determines that the Oaktree Entities' request for sanctions
25 under Fed. R. Civ. P. 45(d)(1) should be granted based on their showing of undue
26 burden.

27 ///

2. The Oaktree Entities Are Entitled to Recover Attorneys' Fees and Costs Under Fed. R. Civ. P. 37(a)(5) Because Debtor's Motions to Compel and Response to the Motions to Quash Were Not Substantially Justified.

Fed. R. Civ. P 37(a)(5) provides in pertinent part:

(5) Payment of Expenses; Protective Orders.

(A) If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing). If the motion is granted--or if the disclosure or requested discovery is provided after the motion was filed--the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, response, or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

(B) If the Motion Is Denied. If the motion is denied, the court may issue any protective order authorized under Rule 26(c) and must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(C) If the Motion is Granted in Part and Denied in Part. If the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.

"A request for discovery is 'substantially justified' under the rule if reasonable people could differ as to whether the party requested must comply." *Reygo Pacific Corp. v. Johnston Pump Co.*, 680 F.2d 647, 649 (9th Cir. 1982) (implied overruling on other grounds recognized by *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1055

1 n. 2 (9th Cir. 2007)). The burden is on the losing party to affirmatively demonstrate that
2 its position was substantially justified. 2 Schwarzer, Tashima and Wagstaffe, *California*
3 *Practice Guide: Federal Civil Procedure before Trial*, ¶ 11:2382 at 11-340 (citing
4 Advisory Committee Notes to 1970 Amendment to former Fed. R. Civ. P. 37(a)(4)).

5 While courts are free to award expenses, Rule 37(a)(5) is really aimed at curbing
6 discovery abuses and preventing waste of judicial time when there is no genuine
7 dispute. 2 Schwarzer, Tashima and Wagstaffe, *California Practice Guide: Federal Civil*
8 *Procedure before Trial*, ¶ 11:2386 at 11-341. Thus, where there is *legitimate difference*
9 *of opinion*, an award of expenses is usually improper. *Id.* However, as the Oaktree
10 Entities assert, Debtor should have known that its subpoenas were improper based on
11 the Colorado Bankruptcy Court's ruling that the only relevant issues subject to
12 discovery were valuation of Debtor's real property assets and Debtor's good or bad
13 faith in proposing its Chapter 11 plan. 2:13-mp-00141-RK Motion at 6:22-26; 2:13-mp-
14 00140-RK Motion at 7:22-26. The Oaktree Entities argue that this court had held that
15 any issue regarding valuation must be tied to the value of the properties at the time of
16 confirmation; hence, even if the Oaktree Entities had information regarding value, it
17 would be outdated and irrelevant. *Id.* Moreover, the Oaktree Entities contend that any
18 evidence regarding the Debtor's good or bad faith should have come from the Debtor,
19 not a third party, and so the instant subpoena was not substantially justified. 2:13-mp-
20 00141-RK Motion at 6:26-27; 2:13-mp-00140-RK Motion at 7:26-27. Furthermore, the
21 extensive document requests regarding what the Oaktree Entities paid for the interests
22 in the loans, their loan policies and practices, and their communications with third
23 parties like the FDIC and the City and County of Denver were irrelevant to the issues of
24 valuation of Debtor's assets, Debtor's good faith and feasibility of Debtor's
25 reorganization plan, which were the issues raised by the contested litigation matters of
26 case dismissal, stay relief, and plan confirmation.

27 Debtor argues that its issuance of subpoenas to the Oaktree Entities and the
28 related motions to compel were substantially justified because the Oaktree Entities

1 were not forthcoming with information regarding their corporate structure, and Debtor
2 issued a subpoena directly to the Oaktree Entities for the same documents that the
3 parties agreed, or that the Colorado Bankruptcy Court ordered, to be produced by SIP.
4 *Debtor's Opposition to Oaktree Capital Group Holdings GP, LLC and Oaktree Capital*
5 *Management, L.P.'s Motion for Attorneys' Fees and Expenses*, Case No. 2:13-mp-
6 00141, Docket No. 16 at 11:15-21; *Debtor's Opposition to Oaktree Capital Group*
7 *Holdings GP, LLC and Oaktree Capital Management, L.P.'s Motion for Attorneys' Fees*
8 *and Expenses*, Case No. 2:13-mp-00140-RK, Docket No. 22 at 11:15-21. Debtor
9 further argues that it was justified to rely upon the statements of the FDIC to contact the
10 Oaktree Entities regarding its loans. *Debtor's Opposition to Oaktree Capital Group*
11 *Holdings GP, LLC and Oaktree Capital Management, L.P.'s Motion for Attorneys' Fees*
12 *and Expenses*, Case No. 2:13-mp-00141, Docket No. 16 at 11:23-26; *Debtor's*
13 *Opposition to Oaktree Capital Group Holdings GP, LLC and Oaktree Capital*
14 *Management, L.P.'s Motion for Attorneys' Fees and Expenses*, Case No. 2:13-mp-
15 00140-RK, Docket No. 22 at 11:23-26. Finally, Debtor contends that the documents
16 Debtor sought from the Oaktree Entities were relevant and could have had bearing on
17 the contested matters, and that the subpoenas were issued in good faith and
18 substantially justified given the circumstances of this case. *Debtor's Opposition to*
19 *Oaktree Capital Group Holdings GP, LLC and Oaktree Capital Management, L.P.'s*
20 *Motion for Attorneys' Fees and Expenses*, Case No. 2:13-mp-00141, Docket No. 16 at
21 12:6-9; *Debtor's Opposition to Oaktree Capital Group Holdings GP, LLC and Oaktree*
22 *Capital Management, L.P.'s Motion for Attorneys' Fees and Expenses*, Case No. 2:13-
23 mp-00140-RK, Docket No. 22 at 12:6-9. However, as discussed previously, Debtor had
24 requested that the Oaktree Entities produce documents that had no relevance to the
25 issues before the Colorado Bankruptcy Court, and thus, to this extent, Debtor cannot
26 show that it was substantially justified in seeking to compel this document discovery.
27 Debtor's reliance on the purported representations of the Colorado Bankruptcy Court
28 and the FDIC to justify its document requests is misplaced; reasonable people could

1 not differ as to whether the Oaktree Entities should comply with its requests for
2 irrelevant information. In this court's view, there can be no legitimate difference of
3 opinion on whether Debtor should have compelled the Oaktree Entities to produce
4 documents that are irrelevant to the issues being litigated.

5 However, the court notes that Debtor, as part of its document subpoenas,
6 requested valuation information relating to its properties, and that there may be some
7 relevance to this information because valuation had some bearing on whether the
8 lender's lien interests were adequately protected and whether Debtor's reorganization
9 plan was feasible. This relates to the pending stay relief and dismissal motions and
10 plan confirmation. Debtor made requests for valuation information in the document
11 subpoenas, specifically, all documents evidencing how Oaktree evaluated and valued
12 the Debtor's Hotel Properties from 2008 to present (request no. 11); full copies of all
13 appraisals, broker's price opinions, market analyses, valuation reports, and other
14 valuations, including all updates and supplements, for the Broadway Property, whether
15 requested by First Tier Bank, the FDIC, Oaktree, or SIP (request no. 20); and full
16 copies of all appraisals, broker's price opinions, market analyses, valuation reports, and
17 other valuations, including all updates and supplements, for the Colfax Property,
18 whether requested by First Tier Bank, the FDIC, Oaktree, or SIP (request no. 21).
19 These requests were arguably relevant to the issues before the Colorado Bankruptcy
20 Court. The Oaktree Entities argued that this information was too attenuated to be
21 relevant. In this court's view, one of these requests sought completely irrelevant
22 information, but the two other requests arguably sought relevant information. As to
23 information about what Oaktree personnel thought about valuation of the Debtor's
24 properties, the court agrees with the Oaktree Entities that this information was too
25 attenuated to be relevant because the valuation of Debtor's properties should be made
26 based on objective assessments of valuation based on scientifically accepted methods
27 of valuation and not based on subjective evaluations of what individuals in the Oaktree
28 Entities may have thought were the value of the Debtor's properties or what motivated

1 them to obtain valuations of the properties. Such consideration warranted this court's
2 rulings to quash the subpoenas as to this requested material.

3 The other requests for appraisals and similar valuation reports and opinions for
4 the Debtor's Colfax and Broadway properties from 2008 to present arguably sought
5 relevant information relating to the valuation of these properties for the issues of stay
6 relief, dismissal, and plan confirmation before the Colorado Bankruptcy Court.

7 Although the court quashed the subpoenas as to all of these requests for valuation
8 information, and, as the Oaktree Entities argued, the valuation of the properties should
9 be based on objective assessments of valuation data available to Debtor from other
10 sources, and the relevance of old valuation reports going back to 2008 may be
11 somewhat attenuated due to their age, the court cannot find upon further consideration,
12 despite its skepticism expressed at the hearings on November 20 and 21, 2013, that
13 these requests sought completely irrelevant information, particularly after Debtor
14 agreed at the November 20, 2013 hearing to limit its requests to valuation to 2011 when
15 the Oaktree Entities first had involvement with the loan portfolio with Debtor's loans and
16 afterwards. Thus, the court finds that Debtor's requests for this information militates in
17 part the need to award fees and expenses.²

18 Accordingly, as discussed herein, the court determines that it should award

19 _____
20 ² Debtor in its oppositions to the motions argues that it "believes there are relevant documents in
21 possession of Oaktree that could have bearing on the relief from stay or plan confirmation issues,
22 particularly with internal valuations and communications that would tend to support Debtor's reasons for
23 filing its Chapter 11 case in good faith and the terms proposed in the Plan." *Debtor's Opposition to*
24 *Oaktree Capital Group Holdings GP, LLC and Oaktree Capital Management, L.P.'s Motion for Attorneys'*
25 *Fees and Expenses*, Case No. 2:13-mp-00141, Docket No. 16 at 12:6-9; *Debtor's Opposition to Oaktree*
26 *Capital Group Holdings GP, LLC and Oaktree Capital Management, L.P.'s Motion for Attorneys' Fees*
27 *and Expenses*, Case No. 2:13-mp-00140-RK, Docket No. 22 at 12:6-9. As discussed herein, other
28 valuations might have some arguable relevance, though probably minimal, to the valuation of the
properties for plan confirmation and stay relief, though originally going back to 2008, but later limited to
2011 and afterwards, was remote in terms of relevancy for valuation for plan confirmation purposes as of
a hearing date then scheduled for January 2014. But in response to Debtor's arguments, the court
determines that internal communications within the nonparty Oaktree Entities regarding valuation were
irrelevant to the purposes of valuation, plan feasibility and Debtor's good faith in filing the Chapter 11
case, the issues before the Colorado Bankruptcy Court. Debtor's just saying such communications
indicating some sort of party motivation, for example, were relevant does not make it so, even if the
Oaktree Entities were parties, which status Debtor had not shown in these proceedings.

1 attorneys' fees and costs to the Oaktree Entities associated with the litigation matters
2 relating to the defense of the Debtor's document subpoenas because, for the most part,
3 Debtor's document requests in the subpoenas to the Oaktree Entities were not
4 substantially justified.

5 **3. The Oaktree Entities Complied with Local Bankruptcy Rule 7054-1.**

6 Pursuant to Local Bankruptcy Rule ("LBR") 7054-1(a), a court can award costs to
7 the prevailing party when costs are allowed by the FRBP or other applicable law. The
8 prevailing party must file and serve a bill of costs no later than thirty days after entry of
9 the judgment. LBR 7054-1(c). Additionally, a party seeking an award of attorneys' fees
10 must file and serve a motion no later than thirty days after the entry of judgment or
11 other final order. LBR 7054-1(g).

12 This court granted the Oaktree Entities' motions to quash Debtor's document
13 subpoenas and denied Debtor's motions to enforce the subpoenas. *Order on Oaktree*
14 *Capital Group Holdings GP, LLC's Motion to Quash the Debtor's Third Party Subpoena*,
15 Case No. 2:13-mp-00141-RK, Docket No. 11 at 2:1; *Order on Oaktree Capital Group*
16 *Holdings GP, LLC's Motion to Quash the Debtor's Third Party Subpoena*, Case No.
17 2:13-mp-00140-RK, Docket No. 12 at 2:1; *Order on Order to Show Cause on Debtor*
18 *Morreale Hotels, LLC's Motion to Enforce Subpoena and Compel the Production of*
19 *Documents Pursuant to Subpoena*, Case No. 2:13-mp-00141-RK, Docket No. 10 at
20 2:13; *Order on Order to Show Cause on Debtor Morreale Hotels, LLC's Motion to*
21 *Enforce Subpoena and Compel the Production of Documents Pursuant to Subpoena*,
22 Case No. 2:13-mp-00141-RK, Docket No. 13 at 2:13. Accordingly, the Oaktree Entities
23 are the prevailing parties and may seek reimbursement of costs and attorneys' fees, as
24 they did by filing the instant motions.

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4. The Court Determines that Attorneys' Fees are Generally Reasonable under Lodestar Method, But Awards Partial Fees Because Debtor's Actions regarding Its Document Subpoenas Were Not Entirely Substantially Justified.

Pursuant to Fed. R. Civ. P. 37, if a discovery enforcement motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred on the motion among the parties in a just manner. See Fed. Rule Civ. P. 37(a)(5)(B) and (C); 2 Schwarzer, Tashima and Wagstaffe, *California Practice Guide: Federal Civil Procedure before Trial*, ¶ 11:2385 at 11-341. A starting point for determining a reasonable fee amount is the lodestar method – the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The prevailing party should make a “good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary.” *Id.* at 433-434. The court has discretion in determining the number of hours that were reasonably expended by the prevailing lawyers. *Sorenson v. Mink*, 239 F.3d 1140, 1146 (9th Cir. 2001). Courts need not attempt to portray the discretionary analyses that lead to their numerical conclusions as elaborate mathematical equations, but must provide sufficient insight into the court's exercise of discretion. *Cunningham v. County of Los Angeles*, 879 F.2d 481, 485 (9th Cir. 1988). The court departs from a pure lodestar method analysis because the billing entries contemporaneously prepared by counsel for the Oaktree Entities did not separate for services later determined by the court to have been for opposing improper discovery as opposed to proper discovery, and it is impractical to sort out now what fees were incurred for working on improper discovery versus proper discovery. The court has attempted in its decision to comply with Fed. R. Civ. P. 37(a)(5) after giving an opportunity to be heard, by apportioning the reasonable expenses for the motion. Fed. R. Civ. P. 37(a)(5)(B) and (C).

Here, the court finds the appropriate amount that should be awarded to the Oaktree Entities to be \$25,000.00. The court determines that the rates and hours

1 claimed in services are generally reasonable under the lodestar method for the work
2 performed and do not appear to be disproportionate to the tasks involved, which
3 required extensive briefing and multiple appearances at hearings on an expedited
4 schedule on the discovery enforcement motions to address the various arguments of
5 Debtor why the numerous, detailed requests in the document subpoenas were proper.
6 For example, the work of the three attorneys whose time entries are submitted (Weiss,
7 Schuenemann and Moynihan) does not appear to be duplicative or cumulative to
8 warrant a finding of lack of reasonableness since it appears that they worked on
9 discrete tasks relating to this highly contested matter. Partial fees, however, should be
10 awarded as discussed herein because Debtor's actions to enforce its document
11 subpoenas were for the most part not substantially justified, though not entirely so.
12 Fed. R. Civ. P. 37(a)(5)(A), (B) and (C). The court recognizes that Debtor had
13 withdrawn some of its document requests after consultation with the Oaktree Entities
14 before the motions to quash and to enforce the subpoenas were filed, that the parties
15 had met and conferred afterwards as part of efforts to lessen the undue burden on the
16 Oaktree Entities in complying with the document subpoenas, that Debtor agreed to
17 narrow several of the requests (i.e., narrowing requested valuation information to 2011
18 and afterwards, and narrowing its requests to communications with a list of specifically
19 named individuals affiliated with the Oaktree Entities) and that most, but not all, of the
20 categories of documents requested in the document subpoenas remaining in dispute
21 between the parties sought irrelevant information and were not substantially justified.
22 As to specific fees claimed, the court further determines that the in-house counsel
23 employee for the Oaktree Entities, Cary Kleinman, in describing the corporate structure
24 served as percipient witness rather than as retained counsel; therefore, such fees for
25 the hours expended to attend hearings (\$1,750.00) are not awardable. Additionally, a
26 detailed account of the hours expended by Monica A. Kohles was not provided in the
27 Statements Supporting the Motions; thus, it is unknown whether that amount requested
28 by that professional is reasonable.

1 Moreover, the Oaktree Entities' original motions for attorneys' fees requested a
2 total of \$28,155.00 in fees and \$1,750.00 in costs, but later submitted in the subsequent
3 detailed Statements a computation of \$49,495.00 in fees in response to the court's
4 request for specific and detailed billing entries for the claimed fees. *2:13-mp-00141-RK*
5 *Motion* at 1:4-5; *2:13-mp-00140-RK Motion* at 2:4-5; *Oaktree Capital Group Holdings*
6 *GP, LLC'S Statement in Support of Motion for Attorneys' Fees and Expenses*, Case No.
7 *2:13-mp-00141-RK*, Docket No. 31 at 1:4-5; *Oaktree Capital Group Holdings GP,*
8 *LLC'S Statement in Support of Motion for Attorneys' Fees and Expenses*, Case No.
9 *2:13-mp-00141-RK*, Docket No. 37, *Exhibit A* at 2:13; *Oaktree Capital Group Holdings*
10 *GP, LLC'S Statement in Support of Motion for Attorneys' Fees and Expenses*, Case No.
11 *2:13-mp-00140-RK*, Docket No. 31 at 1:4-5; *Oaktree Capital Group Holdings GP,*
12 *LLC'S Statement in Support of Motion for Attorneys' Fees and Expenses*, Case No.
13 *2:13-mp-00140-RK*, Docket No. 37, *Exhibit A* at 2:13. A request for attorneys' fees
14 should not result in a second major litigation. *Hensley v. Eckerhart*, 461 U.S. at 437.
15 Based on the moving papers, the Oaktree Entities apparently incurred \$21,340.00 in
16 fees after the court made its rulings to quash the document subpoenas on November
17 21, 2013 to collect the \$28,155.00 in fees incurred before on the subpoena
18 enforcement motions. Such fees are disproportionate to the amount of fees incurred in
19 opposing the subpoenas, and thus it is unreasonable for Debtor to completely bear
20 such expenses. See *In re Puget Sound Plywood, Inc.*, 924 F.2d 955, 961 (9th Cir.
21 1991)(in determining reasonableness of attorneys' fees under 11 U.S.C. § 330, Ninth
22 Circuit stated that attorney seeking reasonable fees had the "obligation to consider the
23 potential for recovery and balance the effort required against the results that might be
24 achieved"). The court need not provide a detailed account of each amount that is
25 reasonable or unreasonable. See *Cunningham v. County of Los Angeles*, 879 F.2d at
26 485-486; see also, Fed. R. Civ. P. 37(a)(5)(C) (where the discovery enforcement motion
27 is granted in part and denied in part, the court may apportion reasonable expenses for
28 the motion; Fed. R. Civ. P. 37(a)(5)(B) (payment of reasonable expenses are awardable

1 to the prevailing party if the motion is denied unless the motion was substantially
2 justified or other circumstances make an award unjust.)

3 Pursuant to Fed. R. Civ. P. 37(a)(5)(B) and (C), the court is to take into account
4 the extenuating circumstances as discussed herein that renders an award of the total
5 amount requested by the Oaktree Parties unjust, namely, the moving papers
6 themselves only requested about \$28,000, but movants submitted documentation for
7 about \$49,000; some of the fees were for in-house counsel whose participation in the
8 matters were in the nature of a witness; fees as to one attorney are undocumented;
9 movants agreed to withdraw or narrow some of their requests in the document
10 subpoenas (i.e., limiting valuation data to 2011 and afterwards, providing a list of
11 individuals affiliated with the Oaktree Entities whose communications Debtor sought to
12 examine, and narrowing the list of entities for which discovery was sought based on
13 discussions at settlement negotiations and hearings); some of the unsettled requests
14 for information in the document subpoenas did not seek completely irrelevant material
15 and had some justification; and the fees incurred on these motions are disproportionate
16 to the fees incurred in opposing the subpoena enforcement motions on the merits.
17 Accordingly, under the circumstances, the court determines that it is appropriate to
18 award the Oaktree Entities on their motions for attorneys' fees and costs in the amount
19 of \$25,000.00, and that the circumstances as described herein would make it unjust to
20 award a greater amount.

21 The court determines that Debtor and its counsel, Kutner Brinen Garber, P.C.,
22 are both responsible for the sanctionable conduct and have joint and several liability for
23 the award of sanctions. Fed. R. Bankr. P. 7037, 9014 and 9016; Fed. R. Civ. P.
24 37(a)(5) and 45(d)(1); *see also, Hyde & Drath v. Baker*, 24 F.3d 1162, 1171-1173 (9th
25 Cir. 1994) (interpreting related provision under Fed. R. Civ. P. 37(d)). The issuance
26 and service of the document subpoenas containing the improper requests for irrelevant
27 material was made by counsel at the behest of the client, Debtor. Both should have
28 known better, especially after considering the opposition of the Oaktree Entities to the

1 improper discovery requests, which they did not heed, prompting this court's orders
2 quashing the subpoenas. Debtor and its counsel had multiple opportunities to
3 reconsider and withdraw their document requests in the subpoenas seeking irrelevant
4 information in the prefiling consultation and meeting with counsel for the Oaktree
5 Entities before the motions to quash and enforce subpoenas were filed, and after these
6 motions were filed, particularly in the conferences between counsel and with the court
7 at the hearings in this case and before and after the hearings, but before the court's
8 rulings granting the motions to quash and denying the motions to enforce.

9 **5. The Oaktree Entities' Assertion that Debtor's Opposition is Actually a**
10 **Motion for Reconsideration Is Not Relevant to the Instant Motion.**

11 The Oaktree Entities argue that Debtor, in its Opposition, discusses how the
12 Oaktree Entities are related to SIP and connected to the Debtor's loan in an attempt to
13 provide argument for why this court's ruling on November 21, 2013, was wrong. *Reply*
14 *of Oaktree Entities to Debtor Morreale Hotel, LLC's Opposition to Motion for Attorney's*
15 *Fees and Expenses*, Case No. 2:13-mp-00141-RK, Docket No. 19, at 7:22-28; *Reply of*
16 *Oaktree Entities to Debtor Morreale Hotel, LLC's Opposition to Motion for Attorney's*
17 *Fees and Expenses*, Case No. 2:13-mp-00140-RK Docket No. 25, at 7:22-28. In both
18 its Opposition and Surreply, Debtor asserts that it is not seeking reconsideration of this
19 Court's Orders entered on December 4, 2013. *Debtor's Opposition to Oaktree Capital*
20 *Group Holdings GP, LLC and Oaktree Capital Management, L.P.'s Motion for Attorneys'*
21 *Fees and Expenses*, Case No. 2:13-mp-00141, Docket No. 16 at 12:11; *Debtor's*
22 *Opposition to Oaktree Capital Group Holdings GP, LLC and Oaktree Capital*
23 *Management, L.P.'s Motion for Attorneys' Fees and Expenses*, Case No. 2:13-mp-
24 00140-RK, Docket No. 22 at 12:11; *Debtor's Surreply on Oaktree Capital Management,*
25 *L.P. and Oaktree Capital Group Holdings GP, LLC'S Motions for Attorneys' Fees and*
26 *Expenses*, Case No. 2:13-mp-00141-RK, Docket No. 24 at 3:8-10; *Debtor's Surreply*
27 *on Oaktree Capital Management, L.P. and Oaktree Capital Group Holdings GP, LLC'S*
28 *Motions for Attorneys' Fees and Expenses*, Case No. 2:13-mp-00140-RK, Docket No.

1 30 at 3:8-10. In this regard, the court agrees with Debtor that an analysis of whether
2 the Opposition is actually a motion for reconsideration is not relevant to an analysis of
3 the instant motion.

4 **Conclusion**

5 For the foregoing reasons, the court determines the motions of the Oaktree
6 Entities should be granted in part to award partial attorneys' fees in the amount of
7 \$25,000.00 and that Debtor and its counsel, Kutner Brinen Garber, P.C., are jointly and
8 severally liable for payment of this award of fees. The court specifies that this is one
9 award for the Oaktree Entities in both of the miscellaneous cases, and not two separate
10 awards for each Oaktree Entity in each case. Separate orders in each miscellaneous
11 case awarding fees and costs will be entered concurrently herewith.

12 IT IS SO ORDERED.

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24 Date: September 8, 2014



Robert Kwan
United States Bankruptcy Judge